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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 160617541-6999-02]

RIN 0648-BG15

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 47 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) and to make minor clarifications to regulations implementing the Crab FMP. This final rule addresses how individual processing quota (IPQ) use caps apply to the Bering Sea *Chionoecetes bairdi* Tanner crab fisheries: the eastern *C. bairdi* Tanner (EBT) and the western *C. bairdi* Tanner (WBT). This regulation exempts EBT and WBT IPQ crab that is custom processed at a facility through contractual arrangements with the processing facility owners from being applied against the IPQ use cap of the processing facility owners, thereby allowing a facility to process more crab without triggering the IPQ use cap. This exemption is necessary to allow all of the EBT and WBT Class A individual fishing quota crab to be processed at the facilities currently processing EBT and WBT crab, and will have significant positive economic effects on the fishermen, processors,

and communities that participate in the EBT and WBT fisheries. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Crab FMP, and other applicable law.

DATES: Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 47 to the Crab FMP, the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

The Environmental Impact Statement (Program EIS), RIR (Program RIR), Final Regulatory Flexibility Analysis (Program FRFA), and Social Impact Assessment prepared for the Crab Rationalization Program (Program) are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907-586-7228.

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 47 to the Crab FMP and regulatory amendments to the Program. NMFS published a notice of availability for Amendment 47 in the **Federal Register** on September 13, 2016 (81 FR 62850). Comment on Amendment 47 was invited through November 14, 2016. The Secretary approved Amendment 47 on December 6, 2016, after accounting for information from the public, and determining that Amendment 47 is consistent with the Crab FMP, the Magnuson-Stevens Act, and other applicable law. NMFS published the proposed rule to implement Amendment 47 on September 23, 2016 (81 FR 65615). The

comment period on the proposed rule ended on October 24, 2016. NMFS received four comments. A summary of these comments and NMFS' responses are provided in the Comments and Responses section of this preamble.

This final rule modifies regulations that specify how IPQ use caps apply to IPQ issued for EBT and WBT crab fisheries. The following sections describe: 1) the Bering Sea and Aleutian Islands (BSAI) crab fisheries under the Program, 2) IPQ use caps and custom processing arrangements, and 3) this final rule.

The BSAI Crab Fisheries under the Program

This section and the following section of the preamble provide a brief description of the Program, and the elements of the Program, that apply to Amendment 47 and this final rule. For a more detailed description of the Program as it relates to this final rule, please see Sections 2.5 and 2.6 of the RIR (see **ADDRESSES**) and the preamble of the proposed rule (81 FR 65615; September 23, 2016).

The Program was implemented on March 2, 2005 (70 FR 10174). The Program established a limited access privilege program for nine crab fisheries in the BSAI, including the EBT and WBT crab fisheries, and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch to shoreside crab processors or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP license holders who harvested and processed their catch at sea; catcher/processor crew QS was issued to captains and crew on board catcher/processor vessels; and catcher vessel crew QS was

issued to captains and crew on board catcher vessels. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch, called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a processor holding IPQ for that fishery. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

NMFS issued QS and PQS for the EBT and WBT crab fisheries. Unlike the QS and PQS issued for most other Program fisheries, the QS and PQS issued for the EBT and WBT crab fisheries are not subject to regional delivery and processing requirements, commonly known as regionalization. Therefore, the Class A IFQ that results from EBT and WBT QS, and the IPQ that results from EBT and WBT PQS, can be delivered to, and processed at, any otherwise eligible processing facility. In addition, the PQS and resulting IPQ issued for the EBT and WBT crab fisheries are not subject to right-of-first-refusal (ROFR) provisions included in the Program. The ROFR provisions provide

certain communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community holding the ROFR.

Because the EBT and WBT crab fisheries are not subject to regionalization or ROFR provisions, crab harvested under a Class A IFQ permit in these fisheries can be delivered to processors in a broad geographic area more easily than crab harvested under Class A IFQ permits in Program fisheries subject to regionalization and ROFR provisions. The rationale for exempting the EBT and WBT crab fisheries from regionalization and ROFR provisions is described in the Program EIS (see **ADDRESSES**), and in the final rule implementing the Program (70 FR 10174, March 2, 2005).

IPQ Use Caps and Custom Processing Arrangements

The Program limits the amount of QS that a person can hold (i.e., own), the amount of IFQ that a person can use, and the amount of IFQ that can be used on board a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

In most of the nine BSAI crab fisheries under the Program, including the Tanner crab fisheries, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially issued PQS. No person in the EBT or WBT crab fisheries received in excess of 30 percent of the initially issued PQS (see Section 2.5.2 of the RIR). Therefore, no person may use an amount of EBT or WBT

IPQ greater than an amount resulting from 30 percent of the initially issued EBT or WBT PQS. The rationale for the IPQ use caps is described in the Program EIS and the final rule implementing the Program (70 FR 10174, March 2, 2005).

Section 680.7(a)(7) provides that IPQ use by a person is calculated by summing the total amount of IPQ that is held by that person and IPQ held by other persons who are affiliated with that person. The term “affiliation” is defined in § 680.2 as a relationship between two or more entities where one entity directly or indirectly owns or controls 10 percent or more of the other entity. Additional terms used in the definition of “affiliation” are described in § 680.2.

Under § 680.7(a)(7), any IPQ crab that is “custom processed” at a facility an IPQ holder owns will be applied against the IPQ use cap of the facility owner, unless specifically exempted by § 680.42(b)(7). A custom processing arrangement exists when an IPQ holder has a contract with the owners of a processing facility to have his or her crab processed at that facility, and the IPQ holder does not have an ownership interest in that processing facility or is not otherwise affiliated with the owners of that processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to that IPQ holder’s specifications. Custom processing arrangements typically occur when an IPQ holder does not own a shoreside processing facility or cannot economically operate a stationary floating crab processor.

This Final Rule

Below is a brief description of this final rule. For a more detailed description of the rationale for this final rule, please see Sections 1 and 2.9.2 of the RIR (see

ADDRESSES) and the preamble of the proposed rule (81 FR 65615; September 23, 2016).

This final rule modifies § 680.42(b)(7)(ii)(A) by adding EBT and WBT IPQ crab to the list of BSAI crab fisheries already receiving a custom processing arrangement exemption. This final rule will allow EBT and WBT IPQ crab received for custom processing by the three processors currently operating in these fisheries to qualify for a custom processing arrangement exemption and not apply against the IPQ use caps for these processors. With this final rule, all EBT and WBT IPQ crab received under custom processing arrangements at the facilities owned by the three existing EBT and WBT processors (Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods) will not be counted against the IPQ use cap of the facility or the facility owners. The custom processing arrangement exemption allows these processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters to fully harvest and deliver their EBT and WBT Class A IFQ crab to IPQ holders with a custom processing arrangement at facilities operating in these fisheries.

At its June 2016 meeting, the North Pacific Fishery Management Council (Council) voted to recommend Amendment 47, which creates a custom processing arrangement exemption for EBT and WBT crab. The Council recognized that consolidation within the Tanner crab processing sector has constrained the ability of the processing sector to process all of the EBT and WBT Class A IFQ crab without exceeding the IPQ use caps. The Council determined that the likelihood of additional unique and unaffiliated processing facilities entering the Tanner crab processing sector

for the 2016/2017 crab fishing year or the near future is low, creating a significant risk that the portion of the Tanner crab allocation in excess of the caps will not be processed. Without the ability to have all EBT and WBT Class A IFQ processed, that portion of the Tanner crab allocation in excess of the caps will likely go unharvested because sufficient processing facilities do not currently exist in the Bering Sea region.

The anticipated effects of this final rule include allowing the full processing of all EBT and WBT Class A IFQ crab and the associated economic and social benefits of that processing activity for harvesters, the existing Tanner crab processors, and the communities where processing facilities are located. These communities include Akutan, Dutch Harbor/Unalaska, King Cove, and Saint Paul, AK. This final rule will allow all of the Tanner crab Class A IFQ to be harvested and processed by existing processors and will thus avoid the adverse economic and social impacts created by the lack of adequate processing capacity that would otherwise result if the EBT and WBT crab fisheries could not be fully processed. Without this rule, only 90 percent of the EBT and WBT Class A IFQ could be processed by the existing processors. The remaining ten percent of the EBT and WBT Class A IFQ crab represents approximately \$3.4 million in ex-vessel value and \$4.95 million in first wholesale value based on estimated ex-vessel and first wholesale values of EBT and WBT crab in the 2015/2016 crab fishing year, the most recent crab fishing year for which EBT and WBT total allowable catches (TACs) have been specified (see Section 2.9 of the RIR for additional detail).

The Council and NMFS considered whether this final rule could result in further consolidation of Tanner crab processing to fewer facilities than currently operating. Since EBT and WBT crab are not subject to regionalization or ROFR, there would be no

regulatory limitations preventing all of the EBT and WBT IPQ crab from being processed by one company at one facility. The Council and NMFS determined that operational factors make it unlikely that additional consolidation will occur. First, the extent to which the exemption allows further consolidation depends on whether processors choose to enter custom processing arrangements with IPQ holders. The choice to enter those arrangements depends largely on the benefit to the IPQ holder arising from using the IPQ at the holder's own facility or custom processing the IPQ at a plant unaffiliated with the IPQ holder. Collectively, the three companies and their facilities that process Tanner crab have substantial holdings of IPQ (see Table 2-3 of the RIR). It is likely more economical for these companies to process the IPQ they hold at their facilities rather than to negotiate a custom processing agreement with another processor, which reduces the likelihood of further consolidation.

Second, the extent of further consolidation depends on the business decisions that participants make regarding their participation in other crab fisheries, such as Bristol Bay red king crab and Bering Sea *C. opilio* crab. None of the current Tanner crab processors only process Tanner crab; all companies and facilities that process Tanner crab also process Bristol Bay red king crab and Bering Sea *C. opilio*. Crab processing tends to be labor intensive, requiring relatively large crews. The cost of transporting, housing, and provisioning crews to run crab processing lines at a plant can be high. Processors that are active in other BSAI crab fisheries may be more likely to continue processing in the Tanner crab fisheries to help maintain a consistent amount of crab available for processing at the facility (see Section 2.9.2 of the RIR for more information).

Third, processors are likely to maintain processing facilities near the fishing grounds. Proximity to the fishing grounds may help prevent or reduce deadloss—dead crab landed at the dock, which is associated with increased transit time between the fishing grounds and offload. Additionally, proximity to the fishing grounds can help harvesters maximize their efficiency and prevent the need to spend significant time transiting to and from processing facilities for offload. Given these factors, the Council and NMFS concluded that additional consolidation of processing activity in the EBT and WBT fisheries is unlikely under current and projected operations.

This final rule will provide a benefit to processors willing to custom process Class A IFQ for EBT and WBT crab, and those IPQ holders who do not own processing facilities and must have their crab custom processed. The custom processing arrangement exemption for EBT and WBT IPQ crab avoids the adverse economic impacts created by the 30-percent IPQ use cap for Tanner crab fisheries to IPQ holders who own and operate processing facilities. This final rule will also benefit those IPQ holders who do not have processing facilities since their IPQ could be custom processed by an existing facility and their custom processing arrangement will not count against the 30-percent IPQ use cap (see Section 2.9.2 of the RIR for further information).

This final rule will benefit harvesters who hold Class A IFQ for EBT and WBT crab. Without this rule, harvesters with EBT or WBT Class A IFQ likely will be unable to fully harvest allocations provided to them due to IPQ use cap limitations imposed on IPQ holders and the three existing processors that receive EBT and WBT crab. This rule allows Class A IFQ holders in the EBT and WBT crab fisheries to fully harvest their IFQ allocations, because those Class A IFQ holders who match with IPQ holders who do not

own processing facilities will be able to deliver their IFQ to a processing facility that has a custom processing arrangement with that IPQ holder.

The effects of this final rule on communities and community sustainability are expected to be beneficial relative to no action. This final rule continues the delivery of EBT and WBT Class A IFQ crab to processors at facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or UniSea Seafoods in BSAI communities. This final rule is expected to maintain the amount of income generated and the amount of tax revenues in communities where existing processing facilities are located.

Although this final rule provides a benefit to the existing three processors with processing facilities, this final rule does not preclude the ability for new, unaffiliated processing companies to enter the EBT and WBT fisheries, establish custom processing arrangements with IPQ holders, and process EBT and WBT crab. Section 2.9.2 of the RIR provides more detail on the potential for new unaffiliated processing companies to enter the EBT and WBT crab fisheries.

Regulation to Make a Minor Clarification

This final rule also modifies § 680.42(b)(7)(ii)(B) to clarify the meaning of the phrase “on the effective date of this rule” that occurs in § 680.42(b)(7)(ii)(B). The phrase “on the effective date of this rule” in § 680.42(b)(7)(ii)(B) refers to the effective date of the regulations that implemented Amendment 27 to the Crab FMP and that added § 680.42(b)(7)(ii)(B) to the regulations (74 FR 25449, May 28, 2009). Regulations implementing Amendment 27 to the Crab FMP were published on May 28, 2009, and became effective on June 29, 2009. The phrase “on the effective date of this rule” was inadvertently left in the regulatory text and not replaced with the actual effective date of

the rule. This final rule revises the phrase “on the effective date of this rule” to read “on June 29, 2009” to reduce any confusion about the applicable date for the requirements in § 680.42(b)(7)(ii)(B). This minor correction does not substantively change the intent or effect of § 680.42(b)(7)(ii)(B).

Comments and Responses

Comment 1: The commenter states that NOAA should reduce the “quota” (TACs) of the EBT and WBT fisheries by 50 percent. The commenter also states that existing fishery management regulations are causing biological harm, “poaching” (unreported harvest) is occurring, and additional law enforcement effort is required.

Response: This final rule does not modify the process for determining the total amount of EBT or WBT crab available for harvest each year. The EBT and WBT fisheries are not overfished, not subject to overfishing, and the TACs for these fisheries have not been exceeded in any year these fisheries have been open for fishing since the implementation of the Program. The commenter’s recommendation to reduce the TACs is not supported by available information and is outside the scope of the rule.

The commenter does not provide any data to support the assertion that unreported harvest is occurring. NMFS does not have any data that indicates that unreported harvest is occurring. The NOAA Office of Law Enforcement allocates law enforcement resources as it deems necessary and appropriate to ensure adequate enforcement.

Comment 2: Two commenters express support for the proposed rule and concur with the rationale for the rule as laid out in the preamble to the proposed rule. The commenters urge NMFS to adopt this rule.

Response: NMFS acknowledges this comment.

Comment 3: The commenter states that most stakeholders have accepted the necessity of Amendment 47 and the proposed rule with the understanding that the Council will undertake a more comprehensive review of processor use caps in the EBT and WBT fisheries. The commenter cites to several sections of the RIR that state that large processors are the primary beneficiaries of custom processing cap exemptions for the EBT and WBT fisheries, and that smaller processors that participate in the fisheries could be disadvantaged by the exemption. The commenter also cites to sections in the RIR stating that processor consolidation could curtail product development in that some processors may wish to develop new products which might not be possible (or as advantageous) under custom processing arrangements. According to the commenter, the lack of new product forms has been a quantifiable result of processor consolidation which should be analyzed and addressed through a well-crafted amendment to the FMP.

Response: As described in the preamble to the proposed rule, this final rule, and Section 2.9.2 of the RIR, the Council and NMFS considered the potential impact of Amendment 47 and this final rule on existing and potential processing operations. Based on the information available and the analyses prepared for this action, the Council and NMFS determined for reasons provided in the preambles of the proposed rule and this final rule that Amendment 47 and this final rule are not likely to cause adverse impacts on fishermen, processors, or communities participating in the EBT and WBT crab fisheries.

The decision to enter into a custom processing arrangement is a voluntary decision made by each processor. The commenter incorrectly stated that the RIR concluded that processor consolidation would impede the development of new products.

Section 2.9.2 of the RIR states that the theoretical interest of processor ‘A’ in the development of new products but the disinterest of other processors in new product forms may be a reason why processor ‘A’ would not engage in custom processing arrangements with other processors, thereby inhibiting further consolidation in the sector. Although the commenter states that there has been a “quantifiable” lack of new product forms due to processor consolidation, NMFS does not have data to determine the range of product forms provided by crab processors, and cannot determine if consolidation in the number of processors in the fishery has resulted in fewer new product forms. Although the commenter’s suggestion to initiate a new analysis and FMP amendment to assess this issue is outside of the scope of this final rule, when the Council adopted Amendment 47 it also requested Council staff to prepare a discussion paper that will review various approaches to processor consolidation within the EBT and WBT crab fisheries, such as raising the Tanner crab IPQ use cap to 40%; converting Class A IFQ to Class B IFQ; and applying a custom processing arrangement exemption only in years when processing capacity is not sufficient (i.e., when there are less than four processors).

Comment 4: The commenter requests expedited implementation of this rule so that the regulations are effective by January 13, 2017. The commenter states that actions taken by the Alaska Board of Fisheries (Board of Fisheries) in January 2017 could result in changes to State of Alaska (State) harvest policy regulations for the EBT and WBT fisheries. The current State harvest policy regulations do not provide for an EBT or WBT fishery for the 2016/2017 crab fishing year. However, if the Board of Fisheries modifies the EBT and WBT harvest policy regulations at its January 2017 meeting, this could result in changes that would provide an opportunity for the State to issue TACs for the

EBT and WBT fisheries for the 2016/2017 crab fishing year. The commenter expresses concern that if issued, 10 percent of the EBT and WBT Class A IFQ could be stranded if this final rule is not effective by the start of the Board of Fisheries meeting on January 13, 2017.

Response: NMFS acknowledges this request and anticipates that this final rule will be published in the **Federal Register** prior to January 13, 2017, or shortly thereafter, and that the regulations will be effective well in advance of the end of the EBT and WBT fishing seasons on March 31, 2017. However, NMFS has determined that implementation (i.e., publication and effectiveness) of this final rule is not required prior to January 13, 2017, in order for the Board of Fisheries to modify its harvest policy regulations, for the State to issue TACs for the EBT and WBT fisheries, for NMFS to issue IFQ or IPQ, or to prevent stranding of EBT and WBT Class A IFQ. By State regulation (5 AAC 35.510), the EBT and WBT crab fishing seasons end on March 31 of each year. If the Board of Fisheries were to modify its harvest policy regulations and the State issued TACs for the EBT and WBT fisheries, harvesting and processing in the EBT and WBT fisheries could begin because existing Federal regulations allow each of the three processors operating in the EBT and WBT fisheries to receive and process up to 30 percent of the EBT or WBT Class A IFQ (a total of 90 percent of the EBT or WBT Class A IFQ) before being constrained. NMFS anticipates that this final rule will be effective with sufficient time to allow for the complete harvesting and processing of the EBT and WBT fisheries before the end of the fishing seasons on March 31, 2017, should the State modify its harvest policy regulations so that IFQ and IPQ is issued for the 2016/2017

crab fishing year. NMFS is not waiving the 30-day delay in effectiveness requirement of the Administrative Procedure Act for this final rule based on this comment.

Classification

The Administrator, Alaska Region, NMFS, has determined that Amendment 47 to the Crab FMP and this final rule are necessary for the conservation and management of the EBT and WBT fisheries and are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule (81 FR 65615, September 23, 2016) and the preamble to this final rule serve as the small entity compliance guide for this action.

Final Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA) after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency

promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action.

Analytical requirements for the FRFA are described in the RFA, section 604(a)(1) through (6). The FRFA must contain:

1. A statement of the need for, and objectives of, the rule;
2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment will be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of this Final Rule

C. bairdi crab processing facilities have consolidated to the extent that the IPQ use caps are constraining the ability of the remaining processing sector to process the entire allocation of Tanner crab under the caps. Without the entry of additional unique and unaffiliated processors into the Tanner crab processing sector, which appears unlikely in the near future, the portion of the *C. bairdi* Tanner crab allocation in excess of the caps (i.e., 10 percent) will not be harvested because insufficient processing capacity, relative to the use caps, is currently available. In the 2015/2016 Tanner crab season, the gross ex-vessel value for 10 percent of the Class A IFQ for EBT and WBT crab was

estimated at \$3.4 million. Without relief from the use cap restriction, harvesters, processors, and communities are expected to lose the potential benefits from the foregone portion of this crab catch. Management objectives include providing relief from the processing use caps, so that the full *C. bairdi* crab allocation can be harvested, processed, and delivered to consumer markets, worldwide.

Summary of Significant Issues Raised during Public Comment

NMFS published the proposed rule to implement Amendment 47 on September 23, 2016 (81 FR 65615). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on October 24, 2016. NMFS received 4 comments on Amendment 47 and the proposed rule. None of these comments raise issues in response to the IRFA. The Chief Counsel for Advocacy of the SBA did not file any comments on the IRFA or the proposed rule. The public comments received for Amendment 47 were mostly supportive of the action. One comment requested further analysis of how the development of new products by some processors may not be possible or advantageous under custom processing arrangements. However, under this final rule, custom processing arrangements are not required, but rather remain a voluntary business arrangement that a processor may choose to enter. No changes were made to this rule or the RFA analysis as a result of public comments.

Number and Description of Directly Regulated Small Entities

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code

11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The SBA has established size criteria for all other major industry sectors in the United States, including fish processing businesses. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The entities directly regulated by this action are those entities that process EBT and WBT crab. It does not include entities that harvest Class A IFQ EBT and WBT crab. From 2012 through 2014, the most recent period for which NMFS has data on processors, there are no processors considered small entities that will be directly regulated by this action.

This action will also directly regulate registered crab receivers (RCRs) as all Program crab must be received by an RCR. Some RCRs are the same entities that process Tanner crab, and others are those that have their Tanner crab custom processed. In 2015/2016, there were 10 RCRs that received Tanner crab, seven of which are considered large entities due to their affiliations with large seafood processing companies. The remaining three are considered small entities because they are affiliated with not-for-profit organizations.

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not require any new recordkeeping and reporting requirements, or any modification of existing requirements.

Description of Significant Alternatives to this Final Rule that Minimize Economic Impacts on Small Entities

The Council and NMFS did not identify any alternatives to the action alternative that would minimize the impact on small entities better than the action alternative and still meet the objectives for this final rule. The impacts on small entities are defined in the IRFA for this action and are not repeated here. The action alternative will allow the full harvest and processing of the Tanner crab total allowable catch. This action is not expected to have negative economic impacts on the small entities directly impacted by this action.

The Council considered a limited duration option that would have created a temporary rule to provide a fix for the near term, but would require the Council to take further action if it intended to create a more long-term revision. The Council did not select this option as it already has the ability to examine processing activity in the Tanner crab fishery at any time and take future action on this subject. This option would not have had less economic impact on small entities than the action alternative, as the action alternative is not expected to have negative impacts.

List of Subjects in 50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: December 9, 2016

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

**PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE
OFF ALASKA**

1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

2. In § 680.42, revise paragraph (b)(7)(ii) introductory text, and paragraphs (b)(7)(ii)(A) and (B) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

* * * * *

(b) * * *

(7) * * *

(ii) The IPQ crab meets the conditions in paragraphs (b)(7)(ii)(A) and (B) of this section or the IPQ crab meets the conditions in paragraph (b)(7)(ii)(C) of this section:

(A) The IPQ crab is:

(1) BSS IPQ crab with a North region designation;

(2) EAG IPQ crab;

(3) EBT IPQ crab;

(4) PIK IPQ crab;

(5) SMB IPQ crab;

(6) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude;

(7) WAI IPQ crab; or

(8) WBT IPQ crab.

(B) That IPQ crab is processed at:

(1) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009; or

(2) Any stationary floating crab processor that is:

(i) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009;

(ii) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(iii) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on June 29, 2009, in which case that stationary floating crab processor is not required to be located within a harbor.

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